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October 6, 2017

Mayor Derrick Ford Freeman
444 4th Street
Port Arthur, TX 77640

Via Email derrick.freeman@portarthurtx.gov
and First-Class Mail

Re: Siting of "Temporary" Sorting and Storage of Storm Debris at 1500 19th Street, Port Arthur,
Texas 77640 by the City of Port Arthur, Texas

Dear Mayor Freeman:

On behalf of the Port Arthur Community Action Network (PA-CAN), we write regarding the community's concerns about the City's siting of a "temporary" storm debris management site (DMS) at 1500 19th Street in Port Arthur, Texas. We hope that you will earnestly consider the issues raised in this letter and find another path for Port Arthur to take in its approach to removing storm debris from its streets efficiently and with the public's health in mind. However, such considerations must also include the residential neighborhood bordering the 19th Street Debris Management Site (19th Street DMS).

We understand that the City is using the 19th Street DMS to sort the debris from Tropical Storm Harvey, which hit Port Arthur in late August. We all agree that debris must be sorted by type before waste can go into the landfill, and the cities across the area impacted by Harvey have sites located at various areas that the Texas Commission for Environmental Quality (TCEQ) approved. What concerns the PA-CAN is why the City selected this site in a residential neighborhood as opposed to other less vulnerable areas in town. While the location is undeniably central, it is still asking the neighborhood surrounding the 19th Street DMS to bear unfairly disproportionate environmental burdens and public health hazards.

A. The City Must Consider Environmental Justice Impacts in Siting a DMS

Environmental Protection Agency (EPA) guidelines provide that a DMS should be established in an area that does not impede the flow of traffic along major transportation corridors, disrupt local business operations, or cause dangerous conditions in residential neighborhoods or schools. According to the EPA, whenever possible, the municipality should avoid locating a DMS near residential areas, schools, churches, hospitals, and other such sensitive areas. In addition, a well-sited DMS requires good ingress/egress to accommodate heavy truck traffic. It does not appear that the City's planning staff has fully considered the around-the-clock light and noise from equipment operation, dust, and traffic at the 19th Street DMS. While we understand that the City may have notified citizens about the planned site activities, the City did not fully inform all citizens about all the potential hazards from this type of facility. Nor has the City followed through with the promises it made to residents regarding the monitoring; wetting down of debris and streets to mitigate dust; and additionally, that the site would be merely "temporary."

Moreover, DMS selection criteria should also take into consideration any disproportionately high or adverse impacts on minority or low-income populations in accordance with Executive Order 12898. Under Executive Order 12898, as amended "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" (59 FR 7629, Feb. 16, 1994), the Federal Emergency Management Agency (FEMA) has undertaken to incorporate environmental justice into its policies and programs. Executive Order 12898 requires each Federal agency to conduct its programs, policies, and activities that substantially affect human health or the environment, in a manner that ensures that those programs, policies, and activities do not have the effect of excluding persons from participation in, denying persons the benefit of, or subjecting persons to discrimination because of their race, color, or national origin or income level. With respect to the siting of DMS facilities, Executive Order 12898 requires federal agencies (or any local government or governmental agency in receipt of federal funding from a source such as FEMA) to evaluate its actions for disproportionately high and adverse effects on minority or low-income populations and to find ways to avoid or minimize these adverse impacts where possible.

To trigger Executive Order 12898, the effects of the project must be both adverse, and effect a low-income or minority population more so than it would the general public. Any adverse effects that appreciably put a minority or low-income population at an increased health risk, or appreciably affect their physical or economic wellbeing, will trigger Executive Order 12898. The City should have identified the residential neighborhood near the 19th Street DMS (Census Block Group 482450118011) as an environmental justice community **before** the City began any activities that may adversely impact that area. Specifically, the neighborhood near the 19th Street DMS is 94% minority and 64% low income according to the most recent census estimates available. These demographics compared to the entire City of Port Arthur, which is 78% minority and 55% low income, indicate a higher minority and low-income population in the area where the City has sited the 19th Street DMS.

Under Executive Order 12898, the disproportionate adverse impacts to this EJ Community identified in this letter because of the operations of the 19th Street DMS must be either avoided or minimized by the City where possible. Because the 19th Street DMS is already operating, the remainder of this letter requests specific information regarding the initial and ongoing environmental data collected by the City regarding the site and provides some specific mitigation activities that the City should take to reverse the negative impact on the residential neighborhood near the 19th Street DMS while it remains in operation. Finally, it makes specific recommendations to the City regarding the proposed closure of the site in the next 2 weeks or on or before October 19, 2017. Given that you represented to the community this DMS

was to be a “temporary” site, having the site open an entire month is longer than the community understood it would be open.

B. Request for Data Collection Before and During Operations

When selecting a DMS, pre-existing conditions must be considered because the sites will have to be restored upon site closeout. We assume that the City complied with TCEQ regulations in testing the site prior to its opening to determine the baseline contaminants present, if any, at this former water treatment plant site. By this letter, we are requesting the data collected by the City at the 19th Street DMS submitted to the TCEQ on or before September 9, 2017, as part of the approval process for this site, and any documentation made by the City or its contractors of the environmental conditions at the site prior to its operations as a debris management site. This request specifically includes the following data:

1. **Videotape and/or Photographs of the Proposed 19th Street DMS.** We assume that the City followed best practices and thoroughly videotaped and/or photographed (ground or aerial) the site before beginning any activities. It is also important for the City to periodically update video and photographic documentation to track site evolution.
2. **Documentation of Physical Features.** The City should have also noted any existing structures, fences, culverts, irrigation systems, and landscaping that can help evaluate possible damage claims made later.
3. **Sample Soil and Water.** The City should have collected soil and groundwater samples prior to use of the site.

Please note that it is important that the final evaluation should include the same documentation to avoid disagreements on the condition of the site prior to the operations and the condition to which it was returned.

Further, after the TCEQ’s September 20, 2017 approval of the 19th Street DMS, the City should have instituted an environmental monitoring program. This program would include collecting additional data throughout the operations of the 19th Street DMS for closeout and quality assurance reasons. The data can be compared to the previously established information to determine any remediation that may be necessary. We want to confirm that the City has set up an environmental monitoring program for the site and correspondingly request any data collected because of that program, including the following:

1. **Debris Monitor Reports generated on site conditions and operations.** The City should be generating the following reports for the 19th Street DMS on a regular basis as its operations continue:
 - Debris collected from curbside and/or collection centers,
 - Debris accepted at the DMS,
 - Debris recycled/reduced at the DMS and taken to final disposition, and
 - Any operational or safety issues.
2. **Sketches of the Site Operation Layout.** Because DMS operations may grow, shrink, or shift on the site, it is important for the City to track reduction, hazardous waste collection, fuel and equipment storage, and to sample soil and water for contaminants. Periodically,

the City should be mapping or sketching activity locations so that areas of concern can be pinpointed later for additional sampling and testing.

3. **Document Quality Assurance Issues.** The City should also document operations that will have a bearing on site closeout, such as petroleum spills at fueling sites, hydraulic fluid spills at equipment breakdowns, installation of water wells for stock pile cooling or dust control, discovery of household hazardous waste, and commercial, agricultural, or industrial hazardous and toxic waste storage and disposal.

Finally, PA-CAN requests any management contracts the City has entered related to the 19th Street DMS, so that we can understand what environmental and health protections for the community the City has contracted for on behalf of its residents given that the City will be reimbursed by FEMA for these operations.

C. Suggested Mitigation Activities for the 19th Street DMS

The City should take immediate action to reduce the impact to people living near the 19th Street DMS using creativity and common sense to determine acceptable measures using the \$10 million in disaster relief funding it has already received. The measures should be tailored to the activities and interests of the impacted population. Because it is in a residential neighborhood, dumping, sorting, and other activities should occur during the daytime hours to reduce the disruption to residents, who are often away during the day and sleeping at night. Other measures can include spraying water on excavated areas and dirt roads to reduce dust, timing material deliveries to avoid rush hour, informing residents when utilities will not be available, and creating a community area on land that is reclaimed.

Below is a list of specific, suggested mitigation activities that the City should implement at the 19th Street DMS if operations continue there. It is the global urging of PA-CAN that the City take all reasonable steps to minimize the release of contaminants from the disaster debris at the management site. If contaminants are released into the environment, the City must take immediate steps to contain the release and notify the public immediately and the TCEQ within 24 hours so that the impacted residential neighborhood can make informed decisions about their health and regulatory agencies can step in as needed.

Improve Collection Activities. Trucks bringing in debris to the site need to make sure that it is pre-sorted curbside in accordance with the joint TCEQ/ EPA guidance available to the community. If the debris is not sorted, then it should not be picked up and taken to the 19th Street DMS but diverted elsewhere.

Improve Active Monitoring at the Sites. While the TCEQ regional offices and local authorities are charged with overseeing the siting and implementation of debris and waste management plans in the affected area the actual oversight is lacking at the 19th Street DMS. Federal and state best practices suggest that there needs to be at least 2 monitors present per site at ingress and egress points for the site. These spotters should be charged with correctly identifying and segregating waste types for appropriate management. Monitoring towers should be constructed of durable structural materials. The structures should be designed to withstand active and static loads. Unfortunately, there does not appear to be any active monitoring going on at the 19th Street DMS. Moreover, TCEQ and the EPA have admitted in recent public discussions that they are only able to inspect these sites every 2 weeks. Current monitoring is inadequate to ensure only appropriate debris is sorted and stored at the site.

Implementing Stormwater Controls. To protect the residents of the surrounding neighborhood, the City should consider constructing an impermeable lining and earthen berms to contain spills and prevent surface water runoff from leaving the area. Other stormwater controls, such as silt fences, to prevent discharge of contaminated runoff into water bodies where such discharge may cause violations of regulatory standards. These actions are necessary to prevent leaching or contaminants running into the neighborhood or nearby storm drains when it rains.

Conduct Air Monitoring. The City should be conducting air monitoring on an ongoing basis for volatiles and hydrogen sulfide (H₂S) gas. Hydrogen sulfide gas can be produced at construction, demolition and debris landfills as bacteria feed on wet gypsum (drywall) board. Hydrogen sulfide gas can irritate the eyes, nose and throat. Eyes may become watery, red and itchy. Exposure to H₂S can also cause headaches, nausea (upset stomach), fatigue (feeling tired), shortness of breath, chest pain and other health-related symptoms. Most people can smell H₂S at levels much lower than the levels that can cause these health effects. Sensitive populations, infants, young children, the elderly, asthmatics, or others with respiratory and/or heart problems may be more likely to experience these symptoms and negative health effects from exposure to H₂S. It is estimated that 10% of the population in the census block group surrounding the 19th Street DMS is over age 64 and at least 5% is under age 5. These individuals are at particular risk for exposure to the adverse effects of hydrogen sulfide gas.

Moreover, people with certain pre-existing health conditions need to pay attention to the air quality because exposure to H₂S can aggravate problems already affecting their health. People with chronic or sensitive eye irritations are more at risk for having eye problems after exposure to H₂S. People with respiratory (breathing) problems such as asthma, bronchitis, emphysema and other breathing problems are at greater risk of having health problems. Another group at increased health risk is persons with cardiopulmonary (heart) diseases. For all these reasons, the City must install air monitors at the site to measure any adverse levels for H₂S gas or other volatiles at the site that could impact the workers or any residents of the surrounding community.

Monitoring Soil and Ground Water. The City should be conducting environmental sampling for soils and groundwater at the 19th Street DMS. Such monitoring and sampling efforts should typically include at least one soil sample and one groundwater monitoring well in areas showing significant visible staining or areas believed to be impacted by the managed waste. These samples should normally be analyzed for total RCRA metals, volatile organic compounds, and semi-volatile organic compounds using approved EPA methods. Please confirm the City is currently undertaking such measures at this site.

Mitigating Dust Generation. The sorting and storage activities approved by the TCEQ for the 19th Street DMS will necessarily generate dust. It is most important that this dust does not migrate into the nearby community. The City must implement some method to control the offsite migration of dust, wood chips or other debris residuals from vehicular traffic and from the handling of debris at the 19th Street DMS. The Occupational Health and Safety Administration (OSHA) guidelines suggest that it is important for workers to stay upwind or away from dust-generating activities, and those involving crystalline silica-containing materials like concrete, brick, tile, drywall, mortar, sand, or stone. When inhaled, the fine crystalline silica particles contained in the dust can become lodged deep in the lung, which can lead to silicosis and other respiratory illnesses. Based on the observations by the community, there is little to no consideration being given to the accumulation of all the storm debris dust and the potential for it to be distributed into the neighborhood nearby. At the very least, the City should be employing water sprays

or mist to suppress dust generation, especially during operations that may create a lot of dust during the sorting process.

Identifying, Tracking and Safely Segregating Hazardous Materials. Given that a large percentage of the storm debris contains building materials from flooded homes, these building materials may contain hazardous materials such as asbestos that when carried by the air can be breathed in and cause adverse health effects. These materials need to be identified as they come into the site, tracked, and segregated for proper disposal.

Designating storage areas for equipment, fuel, and water. Equipment and fuel should have a designated storage area and signs posted appropriately. The fuel storage areas need to be designed to contain spills. Water should be readily available at all times. Water storage areas should be strategically positioned throughout the site and identified appropriately.

Not Permitting Burning. We understand that the TCEQ has not approved burning at the 19th Street DMS. Please advise if this understanding is incorrect. Improperly controlled burning of materials not only represents significant fire hazards, but can also produce additional hazards to the nearby community from the vapors, smoke, and residue that are produced from the burning. No burning should take place at the 19th Street DMS because it is less than 1000 feet from the nearest residence or roadway.

D. Site Closure

By this letter, PA-CAN requests that the City close and decommission the 19th Street DMS as soon as feasibly possible to avoid any further adverse impacts to the residential neighborhood surrounding the facility. Ideally, such closure would take place within the next two weeks. As the TCEQ could review and approve the 19th Street DMS in 11 days, it is logical that the City can find an alternative site away from any residential neighborhood or other vulnerable community in the next few weeks and secure TCEQ's approval of that alternative site in accordance with its regulatory guidelines. The community is also aware of other available sites utilized during Ike and Rita (such as the Procter Street Ext. location) that would not put residential neighborhoods at risk.

Importantly, when the site operations for the 19th Street DMS are complete, the property must be restored to its original condition. Restoration of a site involves removing all traces of the operations and possible remediation of any contamination that may have taken place during the operations. The site must be brought back to its previous environmental state. Debris, processing equipment, storage tanks, protection berms, and other structures built on the site should be removed from the site upon completion of all debris removal and processing operations. The final environmental site evaluation should be an extension of the environmental monitoring program mentioned above. Similar testing as completed in the baseline study should be conducted to confirm that the site has been returned to its pre-activity state. Test samples should be taken at the same locations as those of the initial assessment and monitoring program. However, if warranted, additional test samples may need to be taken at other locations on or adjacent to the site. This might include soil sampling and ground water soil borings to ensure complete remediation of any contaminants and to determine whether they have spread into the adjacent residential neighborhood. We are sure that the City does not want or mean to create a new contaminated, hazardous site on 19th Street. Please confirm this understanding by acting responsibly to close this debris management site as soon as possible.

E. Conclusion

We look forward to hearing from you regarding these community concerns about the continued storage and sorting of debris at 1500 19th Street in Port Arthur, Texas. Please advise what the City of Port Arthur will do to: (1) mitigate these environmental justice and public health concerns identified in this letter, (2) plan to phase out the use of this facility in the next two weeks, and (3) ensure that the City appropriately remediates the site once the City discontinues use of the 19th Street DMS.

If you have any questions regarding this letter or its contained requests, please contact me at 713-501-5070 or adinn@lonestarlegal.org. Please note that if I do not hear from you or the City refuses to provide the information requested in this letter in the next few days, my organization will seek an injunction or undertake whatever legal action is necessary to protect the citizens of Port Arthur, Texas, which could jeopardize the City's future access to federal disaster funding.

Sincerely,



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ATTORNEYS FOR PORT ARTHUR
COMMUNITY ACTION NETWORK

cc: **Via Email and First-Class Mail**

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